

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Othel L. Cooksey, Jr.,
Plaintiff

vs

Bobby McElroy, et. al.,
Defendants

Case No. C-1-07-581
(Barrett, J.)
(Hogan, M.J.)

REPORT AND RECOMMENDATION

This matter is before the Court on Plaintiff's Immediate Motion for Stay (Doc. 68), The Honorable Judge Alan Corbin and the Honorable Judge Thomas Zachman's Memorandum in Opposition to Plaintiff's Immediate Motion for Stay (Doc. 69), and the Brown County Defendants' Memorandum in Opposition to Plaintiff's Immediate Motion for Stay (Doc. 70).

Plaintiff is seeking an order from this Court staying the judgment in Brown County Court of Common Pleas case CVH-2005-0263, pending district court review. *See Fields v. McElroy*, Case No. CVH-2005-0263. Plaintiff, however, is not a party in that case. *Id.*

In determining whether to issue a temporary restraining order and/or preliminary injunction, this Court must balance the following factors:

1. Whether the party seeking the injunction has shown a substantial likelihood of success on the merits;
2. Whether the party seeking the injunction will suffer irreparable harm absent the injunction;
3. Whether an injunction will cause others to suffer substantial harm; and
4. Whether the public interest would be served by a preliminary injunction.

U.S. v. Bayshore Associates, Inc., 934 F.2d 1391, 1398 (6th Cir. 1991); *In Re King World Productions, Inc.*, 898 F.2d 56, 59 (6th Cir. 1990); *Project Vote! V. Ohio Bureau of Employment*

Services, 578 F. Supp. 7, 9 (S.D. Ohio 1982) (Spiegel, J.). See also *Southern Milk Sales, Inc. v. Martin*, 924 F.2d 98, 103 n.3 (6th Cir. 1991); *Newsom v. Norris*, 888 F.2d 371, 373 (6th Cir. 1989); *Frisch's Restaurant, Inc. v. Shoney's, Inc.*, 759 F.2d 1261, 1263 (6th Cir. 1985).

As a non-party, Plaintiff cannot show that the judgment in the lower case will affect him or cause him substantial harm. Because he has not shown the judgment is causing him, or will cause him, irreparable injuries, his motion for injunctive relief relating to that judgment must be denied.

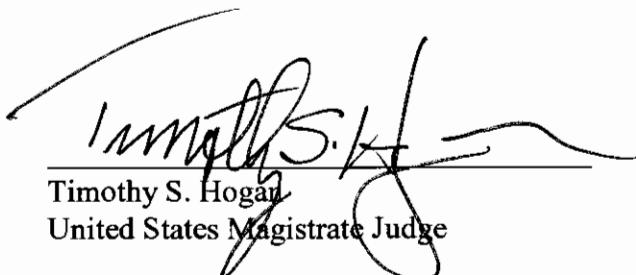
Additionally, Defendants Corbin and Zachman argue that they are entitled to absolute judicial immunity with respect to Plaintiff's request for an injunction pursuant to The Federal Courts Improvement Act of 1996 (Public Law 104-317, October 19, 1996). The Federal Courts Improvement Act of 1996 provides that a judge may not be enjoined for any act or omission taken in his or her judicial capacity unless a declaratory decree was violated or declaratory relief was unavailable. Thus, a judge's absolute judicial immunity bars any suit for injunctive relief that does not meet these two exceptions. In the present case, Plaintiff has not established that either of these exceptions apply. Plaintiff has submitted no evidence that Defendants violated a declaratory decree. Moreover, declaratory relief is theoretically available. However, because there exists no case or controversy between Plaintiff and Defendants Corbin and Zachman, declaratory relief would be improper. See *Arizonaans for Official English v. Arizona*, 520 U.S. 43 (1997)(under Article III, Section 2 of the Constitution, to be heard in federal court, a "controversy" must exist between litigants.). For these reasons, absolute judicial immunity bars Plaintiff's request for injunctive relief.

IT IS THEREFORE RECOMMENDED THAT:

- 1) Plaintiff's Immediate Motion for Stay (Doc. 68) be DENIED.

SO ORDERED.

Date: 7/15/09


Timothy S. Hogan
United States Magistrate Judge

**NOTICE TO THE PARTIES REGARDING THE FILING
OF OBJECTIONS TO THIS R&R**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten (10) days after being served with this Report and Recommendation. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to thirteen (13) days (excluding intervening Saturdays, Sundays, and legal holidays) in the event this Report is served by mail, and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation are based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten (10) days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).

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